Supreme Court, U. S.
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No. 78-986

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

ARKANSAS LOUISIANA GAS COMPANY, *Petitioner,*

v.

FRANK J. HALL, MRS. W. E. HALL, SR., THE H. M. HARRELL TESTAMENTARY TRUST, JAMES E. HARRELL, JOHN K. HARRELL, SR., ASA BENTON ALLEN, SIDNEY G. MYERS, JR., W. O. COCHRAN, THOMAS F. PHILYAW, MRS. ELAINE ALLEN, JAMES A. NOE, D. B. MCCONNELL, MRS. EVA L. WEISS, SOL KAPLAN and NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS, *Respondents.*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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January 1979

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BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

PRELIMINARY INTRODUCTION

Contrary to the erroneous assertions and analyses as set forth in ARKANSAS LOUISIANA GAS COMPANY'S ("Arkla") Petition for Writ of Certiorari as filed with this Court herein, the instant lawsuit between Petitioner and the fifteen Respondents herein, FRANK J. HALL, ET AL., has since July 18, 1974, involved a classic action for damages and reparations for the

breach and violation of a private gas sales contract and "arises under" well established rules and principles of applicable state contract law. Moreover, as evidenced and confirmed by both Petitioner's and Respondents' pleadings, the evidence, and the decisions of the courts below, this case has from its inception presented the same factual and contractual issues, i.e., liability or breach of contract, and quantum of damages, which have heretofore been properly and consistently presented to and resolved by appropriate courts under applicable and controlling rules and principles of contract law. *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 399 U.S. 667 (1950); *Pan American Petroleum Corp.* v. *Superior Court*, 366 U.S. 656 (1961); *Gulf Oil Corp.* v. *American Louisiana Pipeline Co.*, 282 F.2d 401 (6th Cir. 1960); *Eastern Petroleum Co.* v. *Kerr-McGee Corp.*, 447 F.2d 569 (7th Cir. 1971); *Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 P.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied*, 409 U.S. 1052 (1972); and *Louisiana-Nevada Transit Co.* v. *Woods*, 393 F. Supp. 177 (W.D. Ark. 1975), *affirmed* by the United States Court of Appeals for the Eighth Circuit in a per curiam opinion on March 15, 1976.

The basic wrongs, injuries, damages, and injustices for which the Respondents herein have been diligently seeking reparations and compensation for almost five years "arise" out of the fact that Arkla as their contractual obligor under the subject contract breached and violated their contractual rights for fourteen years and by means of its own "uncooperative," "evasive," and "not commendable" conduct beginning in 1961 successfully withheld and concealed all of the true, relevant, and material facts concerning its continued

breach of contract from Respondents for fourteen years. During this fourteen-year period Arkla as Respondents' contractual obligor has by means of its own "uncooperative," "evasive," and "not commendable" conduct obstructed, frustrated, destroyed, and defeated Respondents' contractual rights and legal opportunity to obtain and receive higher prices, as contractually authorized, for their liquefiable hydrocarbons, extracted plant products, and dry or residue gas in a manner consistent with the true intent of the contract and all applicable laws, rules, and regulations. In that the similarly injured and aggrieved parties in the above-cited cases were fully compensated and indemnified for all actual losses and damages incurred and sustained as the result of the breach and violation of their legal and contractual rights under similar gas sales contracts by virtue of applicable and controlling principles of contract law, Respondents herein respectfully submit that in the final analysis they must also be fully protected and fully compensated for all of the actual losses and damages that they have similarly sustained and incurred due to Arkla's continued breach of contract and Arkla's destruction and frustration of their legal and contractual rights for fourteen years.

Arkla by withholding and concealing all of the true, relevant, and material facts concerning the nature and extent of Respondents' contractual rights for fourteen years obviously breached and violated its affirmative legal duty and contractual obligation to timely and in good faith "cooperate" with Respondents in obtaining any requisite administrative approval in order to fully implement and timely effectuate Respondents' legal and contractual rights beginning in the fall of 1961. Contrary to Arkla's contentions here-

in, the courts of this nation have in accordance with well established rules and principles of law, equity, and justice uniformly recognized and enforced the contractual duty and obligation of a party to a contract not to obstruct, frustrate, or defeat the other party's opportunity to obtain administrative approval that may be required to carry out the intent and purpose of the contract. *United States* v. *Peck,* 102 U.S. 64 (1880); *Western Natural Gas Co.* v. *Cities Service Gas Co.,* 507 P.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied,* 409 U.S. 1052 (1972); *Gulf Oil Corp.* v. *American Louisiana Pipe Line Co.,* 282 F.2d 401 (6th Cir. 1960); *Atlas Trading Corp.* v. *S. H. Grossman, Inc.,* 169 F.2d 240 (3d Cir. 1948); *Vanadium Corp. of America* v. *Fidelity and Deposit Co.,* 159 F.2d 105 (2d Cir. 1947); *Watson Bros. Transportation Co.* v. *Jaffa,* 143 F.2d 340 (8th Cir. 1944); *Rochester Park, Inc.* v. *City of Rochester,* 238 N.Y.S. 2d 822 (1963), *aff'd,* 241 N.Y.S.2d 763; *Lennon* v. *Habit,* 216 N.C. 141, 4 S.E.2d 339 (1939); *George W. Garig Transfer, Inc.* v. *Harris,* 226 La. 117, 75 So.2d 28 (1954); and *Cities Service Gas Co.* v. *FPC,* 535 F.2d 1278 (D.C. Cir. 1976).

Arkla in the instant proceeding has petitioned this Court for a writ of certiorari based upon the same jurisdictional allegations and theories that were similarly asserted by Cities Service Gas Company, as a similarly situated pipeline-purchaser and contractual-obligor under a similar private gas sales contract that covered the sale and transmission of natural gas in interstate commerce and was "filed" as "part of a rate schedule" with the Federal Power Commission under the Natural Gas Act, in the case of *Cities Service Gas Co.* v. *Western Natural Gas Co.,* 409 U.S. 1052 (1972). Arkla's similar jurisdictional theories and assertions

as asserted in its Petition for a Writ of Certiorari, just like the jurisdictional theories of Cities Service Gas Company, have been consistently rejected by this Court and are clearly contrary to this Court's decisions in *Skelly Oil Co.* v. *Phillips Petroleum Co., supra,* and *Pan American Petroleum Corp.* v. *Superior Court, supra.*

STATEMENT OF THE CASE

Respondents are royalty owners and working interest owners under various oil and gas leases in the Sligo Gas Field, Bossier Parish, Louisiana. In January 1952, Respondents as royalty owners and working interest owners entered into a contract with Petitioner, a natural gas pipeline company that owned a pipeline system and a gas processing plant in the Sligo Gas Field, to sell to Arkla their liquefiable hydrocarbons, extracted plant products, and residue royalty gas and working interest gas as produced from their leases. The contract terms were negotiated at length. Arkla's prime objective was to obtain a long-term contract, and as concluded, the contract had a twenty-eight year term, from 1952 until 1980. As an inducement for Respondents to contractually bind themselves for such an extended period, Arkla offered to include and there was included a "favored nations" clause, which provided in essence that if Arkla should subsequently purchase any gas from any well or wells in the Sligo Gas Field, Bossier Parish, Louisiana, at a price higher than the prices provided for in the subject contract for Respondents' royalty gas and working interest gas, the price to Respondents would go up to the same level after a consideration of all "pertinent factors" with respect to the two prices in question. The subject "favored nations" clause was clearly designed and in-

tended to be a contractual right and benefit for Respondents and was clearly designed and intended to protect Respondents as sellers under the long-term contract by tying Respondents' contractually authorized prices for their liquefiable hydrocarbons, extracted plant products, and dry or residue gas to the highest prices that Arkla subsequently paid for any "comparable" production in the Sligo Gas Field under any subsequent contract, written or oral. Conversely, the subject "favored nations" clause clearly represented a binding contractual obligation on the part of Arkla, the intent and purpose of which Arkla was not free to ignore, frustrate, or defeat for its own corporate purposes.

In 1961, Arkla, in its dual capacity as a lessee and pipeline-purchaser that owned and operated a pipeline and processing plant in the Sligo Gas Field, contractually acquired a working interest under a protective lease contract from the United States Government covering 2,419.30 acres in the Sligo Gas Field, Bossier Parish, Louisiana. The United States Government as the fee landowner reserved a one-sixth royalty interest in the production obtained from said lands, which it could take in kind or exchange for cash. The Government subsequently elected not to take its share of the royalty gas in kind for its own use, but rather elected to be paid money for its fractional share of the gas produced from its lands and delivered into Arkla's Sligo pipeline system and Arkla's Sligo gas processing plant. Section 2(n) of Arkla's 1961 contract with the United States Government expressly provided that:

> "*Lessee agrees: If owner, or operator, or owner of a controlling interest in any pipe line* or of any company operating the same which may be operated accessible to the oil or gas derived from lands under this lease, to accept and convey and, if a purchaser of such products, *to purchase at reasonable rates and without discrimination the oil or gas of the Government* or of any citizen or company not the owner of any pipe line, operating a lease or purchasing or selling oil, gas, natural gasoline, or other products obtained under a lease or permit granted by the United States." (emphasis added)

In complying with Section 2(n) of the 1961 contract with the Government, Arkla by means of its November 15, 1962 letter agreement with the United States Government expressly agreed that:

> "By your letter of March 27, 1962 you determined prices, so far as concerns the Government's royalty gas of $0.117432 per mcf until January 1, 1962; $0.130252 until January 1, 1967 and thereafter $0.140508 at a pressure base of 15.025 p.s.i.a. In view of the Government's right under the lease contract to determine the value of its royalty gas, but without conceding that the above figures represent market value in the Sligo Field, we have decided that we should accede to the determination and have initiated the proper procedures in our organization to see that accounting and payment is made for Arkansas Louisiana Gas Company's share of the gas at the above figures."

As determined by the courts below, Arkla from 1961 through 1975 in its dual capacity as a lessee and pipeline-purchaser and a pipeline-owner in the Sligo Gas Field fully complied with Section 2(n) of its 1961 contract with the United States Government and their November 15, 1962 letter agreement by paying the agreed-upon prices per Mcf for the Government's

share of the royalty gas and liquid hydrocarbons delivered into its Sligo pipeline system and gas processing plant by means of monthly checks drawn and issued on Arkla's "Gas Purchase Account." The monthly payments made by Arkla to the United States Government from 1961 through 1975 by means of checks drawn on its "Gas Purchase Account" were in payment for the Government's share of the dry or residue gas, liquefiable hydrocarbons, and extracted plant products as produced from its lands and delivered into Arkla's Sligo pipeline and gas processing plant.

Arkla was cautioned and warned by its own officers and officials in 1961 that its payment of higher prices for the Government's royalty gas might breach and trigger Respondents' "favored nations" rights under the subject contract and thus cost Arkla substantial sums of money. (App. 1a-6a.) As noted by the courts below, Arkla by means of its own "uncooperative," "evasive," and "not commendable" conduct was successful in withholding and effectively concealing from Respondents for fourteen years the existence and nature of its contractual agreements with the Government pursuant to which Arkla had consistently paid higher prices for the Government's liquefiable hydrocarbons, extracted plant products, and dry or residue gas as produced from the same Sligo Gas Field. (App. 7a-9a.)

In January of 1974 Respondents for the first time inadvertently heard a rumor about Arkla's paying higher prices for the Government's royalty gas and pursuant to the Freedom of Information Act ultimately discovered the contractual arrangements between Arkla and the United States Government. In June 1974, Respondents were for the first time truthfully advised and informed by the United States Department of the Interior that:

> "The Geological Survey made a determination, by letter dated March 27, 1962, that the following prices would be required for the Government's royalty gas: $0.117432 per MCF until January 1, 1962; $0.130252 until January 1, 1967; and $0.140508 thereafter, all at 15.025 p.s.i.a. Arkansas Louisiana Gas Company, in view of the Government's right under the lease contract to determine the value of its royalty gas, but without conceding that the prices represented market value in the Sligo field, acceded to the price determination made by this office. Effective May 1, 1974, this office made a new determination that the price for the Government's royalty gas taken by Arkansas Louisiana Gas Company would be $0.26 per MCF. . . . The United States Government has not, during the existence of the captioned Oil, Gas and Mineral Lease, elected to take a portion of the gas produced in kind, rather than sell its portion to various parties."

In July 1974 the Respondents made an amicable demand upon Arkla for all of the true, relevant, and material facts concerning Arkla's payment of higher prices for the Government's royalty gas in the Sligo Gas Field since 1961 and for a full accounting of all the losses and damages that Arkla caused the Respondents to sustain and incur for fourteen years due to its "uncooperative," "evasive," and "not commendable" breach of contract. Arkla refused to disclose any facts and to render any accounting whatsoever. (See App. 8a-9a.) Thus, on July 18, 1974, the Respondents instituted an action for damages for Arkla's continued breach of contract and for the losses sustained and incurred due to the fact that Arkla had successfully defeated and destroyed their legal and contractual

rights for fourteen years by virtue of its failure to timely "cooperate" with Respondents and its "uncooperative," "evasive," and "not commendable" withholding of the true facts from Respondents for fourteen years. Arkla countered Respondents' action for breach of contract with a "Petition-in-Reconvention for Declaratory Judgment" by which it invoked the original jurisdiction of the Louisiana state district court to construe and interpret the subject contract in order to determine and establish the "true intent" of the parties to said contract. (App. 10a-21a.) Specifically, Arkla in its "Petition for Declaratory Judgment" as filed with the Louisiana courts judicially asserted that:

> "Arkla's object in the suit is to obtain a judgment and decree declaring its rights against defendants in reconvention, for the past and for the future, with respect to the contract, hereinafter described and referred to, between Arkla and defendants in reconvention, with particular reference to the effect of Arkla's payments of royalties to its lessors under oil and gas leases covering lands in the Sligo Gas Field, Bossier Parish, Louisiana; and to resolve the dispute, hereinafter described, which has arisen between Arkla and defendants in reconvention with respect to the application of that contract to the facts hereinafter alleged. . . .
>
> Wherefore, Arkansas Louisiana Gas Company, plaintiff in reconvention, prays that defendants in reconvention be served with copies of this reconventional demand, and that, after trial, there be judgment of this reconventional demand in its favor and against defendant in reconvention, ..."

Arkla in conjunction with its "Petition for Declaratory Judgment" filed with the Louisiana district court a "Motion for Separate Trial of the Liability and Quantum of Damages Issue in this Suit." (App. 22a-25a.) Arkla in its Motion as filed with the Louisiana state district court judicially asserted and conceded that:

> "Plaintiffs have cumulated in this suit, as appears from the prayer of their petition, an action for declaratory judgment, an action for damages for breach of contract, and an action for an accounting; and defendant has filed herein a reconvention demand seeking a declaration of rights as between plaintiffs and defendant under the contract between them alleged in plaintiffs' petition.
>
> *Defendant does not assert that the cumulation of actions existing in this judicial proceeding is improper;* but it shows that the evidence necessary for the court's decision upon the application of the gas sales contract alleged by plaintiffs and admitted by defendants, to the facts with regard to defendant's royalty settlements under the United States Government lease also alleged in plaintiffs' petition, is relatively simple and involves principally legal rather than factual questions. Whereas, plaintiffs' claim for damages and demand for an accounting would involve evidence on, and determinations by the court as to, the details of each monthly settlement between plaintiffs and defendant since early 1961, and recalculation of the prices in such settlements in accordance with plaintiffs' version of their rights, namely, it would require repricing each monthly settlement for each plaintiff in accordance with royalty settlements under the government lease.
>
> *Only if plaintiffs prevail in their interpretation of their rights under the contract would the monumental accounting described above be necessary."* (emphasis added)

In light of Respondents' action for damages for breach of contract and Arkla's "Petition for Declaratory Judgment" construing the contractual rights and

liabilities of the parties to the subject contract, the Louisiana district court tried these factual and contractual issues, i.e., liability or breach of contract, and quantum of damages, beginning on September 27, 1976, and ending on January 14, 1977. The trial court heard the sworn testimony of numerous witnesses as called by both Respondents and Petitioner, and the sworn testimony fills a transcript of 4,987 pages. Respondents filed 367 items of documentary evidence and Petitioner filed 87 items of documentary evidence during the trial of this case. Both the Louisiana state district court and the Louisiana court of appeal have after four and one-half years of litigation now definitively construed and interpreted the subject contract in light of the true intent of the parties to the contract based on the evidence adduced at the trial of this case under applicable rules and principles of contract law. In light of the evidence in this case with respect to the true intention of the parties to this specific contract, the Louisiana courts below have by interpreting the subject contract consistently resolved and adjudicated the liability, or breach of contract, issue in favor of Respondents and adversely to Arkla. The decisions of the Louisiana courts below on the liability, or breach of contract, issue are entirely consistent with the decisions as rendered by other courts under applicable principles of contract law in *Gulf Oil Corp.* v. *American Louisiana Pipe Line Co.*, 282 F.2d 401 (6th Cir. 1960); *Eastern Petroleum Co.* v. *Kerr-McGee Corp.*, 447 F.2d 569 (7th Cir. 1971); *Louisiana-Nevada Transit Co.* v. *Woods*, 393 F. Supp. 177 (W.D. Ark. 1975), *affirmed* by the United States Court of Appeals for the Eighth Circuit in a per curiam opinion on March 15, 1976; and *Western Natural Gas Co.* v. *Cities Service Gas Co.*, 507 P.2d

1236 (Okla. 1972), *appeal dismissed* and *certiorari denied*, 409 U.S. 1052 (1972).

With respect to the quantum of damages issue, the Louisiana district court awarded Respondents $913,-626.79 in compensatory damages for the actual losses sustained and incurred from 1972 through 1975 due to Arkla's breach of contract. The Louisiana court of appeal affirmed the state district court's decision on the liability, or breach of contract, issue but remanded the quantum of damages issue to the district court for a recalculation of damages.

Arkla's Petition for a Writ of Certiorari to the Louisiana Supreme Court, which complained of the lower courts' resolution of the liability and quantum of damages issue, was denied. The Louisiana Supreme Court granted Respondents' petition for certiorari with respect to their request for an increase in the damages as awarded by the district court. The quantum of damages issue has been fully briefed, argued, and submitted by both Respondents and Arkla and is presently pending before the Louisiana Supreme Court for resolution and decision.

ARGUMENT

This case has from its inception presented a basic contractual dispute over the meaning and intent of the subject contract between Respondents and Arkla dated January 11, 1952, and the resolution of this disputed issue of contract interpretation clearly does not involve any substantial federal question. Clearly, contrary to Arkla's erroneous assertions, the decisions of the Louisiana state courts will not affect anyone but the parties to this specific and single contract in light of

the true intent of the parties to this particular contract under the factual circumstances of this specific case.

Arkla, after having thoroughly tried, submitted, and lost these disputed factual and contractual issues before the Louisiana state courts below, now seeks to have this Court review and modify the factual findings and contractual decisions as rendered and to be rendered by the Louisiana courts in light of the evidence in this case. While the grounds upon which Arkla seeks a writ of certiorari from this Court are rather diffuse and interwoven, Arkla's major thesis is that actions for damages for the breach of gas sales contracts and the interpretation of gas sales contracts "arise under" federal law (Natural Gas Act) and not state contract law. Arkla in support of its petition further argues that the Federal Power Commission (now Federal Energy Regulatory Commission) has the sole and exclusive jurisdiction to interpret gas sales contracts and to award compensatory damages and monetary reparations for the breach and violation of gas sales contracts.

This same erroneous thesis was the primary basis for Cities Service Gas Company's Petition for a Writ of Certiorari in *Cities Service Gas Co.* v. *Western Natural Gas Co.*, No. 72-600 on the docket of this Court, which was denied by this Court on December 11, 1972 in *Cities Service Gas Co.* v. *Western Natural Gas Co.*, 409 U.S. 1052.

A. The Interpretation of the Contract.

The decided cases on these points completely refute Arkla's erroneous contentions that the Federal Power Commission, and now the Federal Energy Regulatory Commission, have since the enactment of the Natural

Gas Act in 1938 had sole and exclusive jurisdiction over actions for damages for the breach of gas sales contracts. Contrary to Arkla's totally erroneous and misplaced contentions that actions for damages for the breach and violation of private gas sales contracts "arise under" federal law, i.e., the Natural Gas Act, not state contract law, this Court in the case of *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 399 U.S. 667 (1950), some twelve years after the Natural Gas Act was enacted by Congress, expressly held that with regard to private gas sales contracts for the sale of natural gas in interstate commerce:

> "If Phillips sought damages from petitioner or specific performance of their contracts, it could not bring suit in a United States District Court on the theory that it was asserting a federal right. And for the simple reason that such a suit would 'arise' under the State law governing the contracts."

This Court in the case of *United Gas Pipe Line Co.* v. *Mobile Gas Corp.*, 350 U.S. 332 (1956), again confirmed that the Natural Gas Act did not destroy or abrogate the integrity of private gas sales contracts and expressly held that:

> "The Natural Gas Act, on the other hand, recognizes the need for private contracts of varying terms and expressly provides for the filing of such contracts as a part of the rate schedules.
>
> The Act thus affords a reasonable accommodation between the conflicting interests of contract stability on the one hand and public regulation on the other . . .
>
> By preserving the integrity of contracts, it permits the stability of supply arrangements which all

agree is essential to the health of the natural gas industry. . . ."

This Court in the case of *Pan American Petroleum Corp.* v. *Superior Court,* 366 U.S. 656 (1961), in a case involving a claim for over $10,000,000 in damages for the breach of a gas sales contract filed with the Federal Power Commission and covering gas sold in interstate commerce, unanimously and expressly held that:

> "Suit was brought in a state court on a common-law contract claim. . . .
>
> The rights as asserted by Cities Service are traditional common-law claims. They do not lose their character because it is common knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas. . . .
>
> We hold that the state courts of Delaware do have jurisdiction to hear and decide the claims that Cities Service has formulated.
>
> *Affirmed."*

Consistent with this Court's decisions in the above and foregoing cases, the courts of this nation have repeatedly recognized and held that the Natural Gas Act does not destroy or abrogate the jurisdiction and authority of the courts to resolve actions for damages for breach of contract. The court in the case of *Ashland Oil & Refining Co.* v. *FPC,* 421 F.2d 17, 20, 23 (6th Cir. 1970), expressly held:

> "*The District Court has jurisdiction in an action based upon asserted breach of contract. . . .*
>
> *The Commission did not undertake to interpret the contracts between the parties. . . .*
>
> In conclusion we re-emphasize that the jurisdiction of this Court in reviewing an order of the

Commission is extremely narrow. F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 575, 585, 62 S.Ct. 736, 86 L.Ed. 1037. *We express no opinion as to what effect the Commission's order or the opinion of this Court in the present proceeding may have upon the case now pending in the United States District Court in Oklahoma. These are matters for determination by the District Court and ultimately by the Court of Appeals of the Tenth Circuit.*

The order of the Commission points out that the court litigation involves contractual issues pertaining to the applicability of the statute of limitations, unjust enrichment and estoppel. There is also presented a contractual question involving helium. The Commission did not pass upon these issues, and this Court does not do so." (emphasis added)

In *Cities Service Gas Co.* v. *FPC,* 535 F.2d 1278 (D.C. Cir. 1976), the court of appeals expressly approved the measure of damages as awarded by the Oklahoma courts to Western Natural Gas Company for the breach and violation of a similar 1949 gas sales contract that covered the transmission and sale of natural gas in interstate commerce and was "filed" with the Federal Power Commission as "part of a rate schedule" under the Natural Gas Act.

In *City of New Orleans* v. *United Gas Pipe Line Co.,* 390 F. Supp. 861 (E.D. La. 1974), the court in following and adhering to this Court's decision in the case of *Pan American Petroleum Corp.* v. *Superior Court, supra,* expressly held:

> "The defendants assert that of necessity these suits involve federal questions. Their first thesis is that the claims must be resolved under the Natural Gas

Act. The contention that contractual claims between parties to a natural gas contract arise under the Natural Gas Act is not res nova; similar arguments were presented to the United States Supreme Court in Pan American Petroleum Co. v. Superior Court of Delaware, 1961, 366 U.S. 656, 81 S.Ct. 1303, 6 L.Ed.2d 584. Although the contentions were presented in a different context, that decision involved issues indistinguishable from those presented here.

'The rights asserted,' as the Court observed in Pan American, 'are traditional common-law claims. They do not lose their character because it is common knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas.' 366 U.S. at 663, 81 S.Ct. at 1307.

The legislation was thus carefully fashioned to exert federal control only in a limited and well-defined area. It would distort that pattern beyond recognition to find inherent in this plan a proscription of state legislation allowing parties to contract to sell natural gas in interstate commerce, or of state law prescribing liability for the breach of such a contract."

In *State of Louisiana* v. *FPC,* 503 F.2d 844, 866 (5th Cir. 1974), the court held:

> "In regard to general damage liability for breach of contract, FPC reasoned that United would be vulnerable if its need to curtail resulted from its own negligence, bad faith, or wrongful conduct. . . .
>
> '. . . we have neither the power nor desire to adjudicate United's contract liability, for as recognized in *International Paper,* that is within the province of the appropriate court.' . . ."

In *Skelly Oil Co.* v. *FPC,* 532 F.2d 177, 179 (10th Cir. 1976), the court held:

> *"This is a matter of ordinary contract law, a Williston-Corbin problem, and, as we consider this petition, nothing more than that. The Natural Gas Act does not alter the ordinary contractual relationships. United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.,* 350 U.S. 332, 76 S.Ct. 373, 100 L.Ed. 373; *Phillips Petroleum Co.* v. *Federal Power Comm'n,* 349 F.2d 535 (10th Cir.). *See also* the termination in *Gulf Oil Corp.* v. *American Louisiana Pipe Line Co.,* 282 F.2d 401 (6th Cir.)." (emphasis added)

In *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591 (1944), the Court held:

> *"It is conceded that under the* [*Natural Gas*] *Act the Commission has no power to make reparation orders."* (emphasis added)

In *FPC* v. *Sunray DX Oil Co.,* 391 U.S. 9 (1968), the Court held:

> "This would amount to a reparation order, and this Court has repeatedly held that the Commission has no reparations power."

As correctly noted by the Oklahoma Supreme Court in the case of *Western Natural Gas Co.* v. *Cities Service Co., supra:*

> "Here the FPC could not take remedial cognizance over Cities' contract violation. . . . Issues involving contract violation were not made subject to the cognizance of FPC by the enactment of the Natural Gas Act. Pan American Petroleum Corp. v. Superior Court, 366 U.S. 656, 81 S.Ct. 1303, 6 L.Ed.2d 584; Gulf, supra."

The decision of the court in the case of *Pure Oil Co.* v. *FPC,* 299 F.2d 370 (7th Cir. 1962), further

refutes Arkla's erroneous jurisdictional contentions as again asserted in the instant proceeding, to wit:

> ". . . the issue with reference to the scope of the comparability clauses is a matter of contract construction which does not here involve a subject within the Commission's special competence. (Cf. Texas Gas Transmission Corp. v. Shell Oil Co., 363 U.S. 263, 80 S.Ct. 1122, 4 L.Ed.2d 1208; Warren Petroleum Corp. v. Federal Power Commission, 10 Cir. 282 F.2d 312). . . ."

The decision of the court in the case of *Pan American Petroleum Corp.* v. *Kansas-Nebraska Natural Gas Co.*, 297 F.2d 561, 566 (8th Cir. 1962), further confirms the correctness of the Louisiana state courts' jurisdictional rulings and the incorrectness of Arkla's erroneous jurisdictional assertions in the instant proceeding, to wit:

> "We think the answer is found in the recent case of the Supreme Court of the United States, Pan American Petroleum Corp. v. Superior Court of Delaware, 1961, 366 U.S. 656, 81 S.Ct. 1303, 6 L.Ed.2d 584. The sole issue there was whether the Delaware Superior Court could take jurisdiction of a case which was bottomed on circumstances identical with those involved herein. The Delaware Supreme Court had sustained its lower court's finding of jurisdiction, stating that the claims of Cities Service '* * * are not founded upon any liability *created* by the Natural Gas Act but upon a private contract deriving its force from state law.' (Emphasis in the original.) Columbian Fuel Corp. v. Superior Court of Delaware, Del. 1960, 153 A.2d 478, 482. In affirming the Delaware court, Mr. Justice Frankfurter said at page 663 of 366 U.S., at page 1307 of 81 S.Ct.:

> 'The rights as asserted by Cities Service are traditional common-law claims. They do not lose their character because it is common knowledge that there exists a scheme of federal regulation of interstate transmission of natural gas.' . . ."

In light of the above-cited cases, the Federal Power Commission long ago formally adopted a policy deferring "contractual issues" and "contractual disputes" involving jurisdictional sales to the appropriate courts. *See Rowan* v. *Allied Chemical Corp.*, 39 F.P.C. 64, 66-67 (1968), where the Commission expressly held and confirmed that:

> "The *Huber* and *Weymouth* cases thus support the view that the Commission does not have primary jurisdiction over contract questions relating to a jurisdictional sale and that a court may properly decide such questions. . . .
>
> It has been the Commission's policy to defer action on contract questions presented to it involving jurisdictional matters pertaining to natural gas which are pending in court. Such contract questions have been decided by the Commission only when neither party has sought a determination in an appropriate court.
>
> The contractual questions presented by Rowan have been fully litigated in court on the issue of liability, although not yet decided. It should also be noted that with respect to the questions presented in court as to the price for the sale of gasoline and other products recovered from the casinghead gas, the Commission has no jurisdiction. In these circumstances we believe it appropriate to defer to the court to decide these contract questions."

In a recent order involving the Commission's primary jurisdiction, the Federal Energy Regulatory

Commission cited the *Rowan* decision with approval. *United Gas Pipe Line Co.*, Docket Nos. RP71-29 et al. (Phase III) (August 9, 1978) at pp. 13, 15.

Arkla on pages 8 and 9, footnote 3, for obvious reasons barely acknowledges that the Federal Power Commission in "*Arkansas Louisiana Gas Company* v. *Frank J. Hall, et al.*, FPC Docket No. RI76-28," expressly rejected Arkla's same erroneous theory of exclusive Commission jurisdiction over the subject contract issues in this case. The Federal Power Commission by means of a series of orders issued beginning March 8, 1976, through January 7, 1977, consistently denied Arkla's "Petition for Declaratory Order" and consistently deferred the legal and contractual issues to the Louisiana state courts for resolution and adjudication under applicable and well established rules and principles of contract law. Specifically, the Federal Power Commission in relying upon the applicable and controlling decisions of this Court, other courts of this nation, and its own *Rowan* policy, consistently held that:

1. *Order Denying Petition—Issued March 8, 1976:*

> "Arkansas Louisiana Gas Company (Arkla) on September 11, 1975, filed a petition for a declaratory order in the above-entitled proceeding contending that the 'favored nations' clause in the January 11, 1952 contract with Frank J. Hall, et al. (Respondents) was not triggered by certain royalty payments made to the United States Government by Arkla. . . .
>
> The circumstances of the dispute between Arkla and Respondents do not call for any different result than that reached in the Pan American case, supra, or the Rowan case, supra. This case presents a question of concurrent jurisdiction, not primary or exclusive jurisdiction. The Commission has jurisdiction over rates, filing and notice as to both Arkla and Respondents. While this Commission has jurisdiction to decide the subject contract question, the Louisiana court also has jurisdiction over an action based upon asserted breach of contract. Accordingly, we believe it appropriate to defer to the court to decide these contract questions.
>
> For the reasons set forth above, Arkla's petition for declaratory order filed on September 11, 1975 in the above-entitled proceeding is denied."

2. *Order Denying Application for Rehearing—Issued June 4, 1976:*

> "On April 6, 1976, Arkansas Louisiana Gas Company (ARKLA) filed an application for rehearing of the Commission's order issued March 8, 1976, Denying ARKLA's Petition For A Declaratory Order in the above-entitled proceeding. ARKLA had sought a determination that the 'favored nation' clause in its January 11, 1952, contract with Frank J. Hall, et al. (Respondents) was not triggered by certain royalty payments made to the United States Government by ARKLA. We held in the April 6 (sic) [March 8] order that we would defer to the Court to decide this contract issue. . . .
>
> The Commission's order issued April 6, 1976, (sic) [March 8, 1976] fully discussed the Commission's jurisdiction over this contract dispute. ARKLA has presented no new facts or issues of law on that subject. Therefore, the Commission will continue to defer to the Court to decide this dispute."

3. *Order Clarifying and Amplifying Commission Order Denying Application for Rehearing—Issued November 8, 1976:*

> "On June 30, 1976, Frank J. Hall, et al. (Respondents) filed a Petition for Clarification and Ampli-

fication of the Commission's order dated June 4, 1976, whereby the Commission denied Arkansas Louisiana Gas Company's (ARKLA) petition for rehearing. On July 6, 1976, ARKLA filed a Limited Application for Rehearing, or, in the Alternative, Clarification, of the Commission's June 4 order.

ARKLA originally had sought a determination that the 'favored nations' clause in its January 11, 1952 contract with Respondents was not triggered by certain royalty payments made to the United States Government by ARKLA. We held in our order issued March 8, 1976, that we would defer to the court to decide this contract issue.

Respondents request amplification of the Commission's order issued June 4, 1976, in regard to the maximum rates, for each year beginning in the fall of 1961 through the year 1972 which, if contractually authorized and if proper filing procedures had been followed, would have been approved by the Commission pursuant to its '*Other Southwest Area Rate*' Opinion Nos. 607 and 607-A. The respective area base rate ceilings for sales of natural gas under Opinion Nos. 607 and 607-A from Northern Louisiana by a producer with contractual authority who properly filed are:

Prior to January 1, 1965	From January 1, 1965 Thru September 30, 1968	From October 1, 1968 thru 1972
16.7¢ per Mcf at 15.025 psia	18.6¢ per Mcf at 15.025 psia	20.6¢ per Mcf at 15.025 psia

Where, as here, the sale contract provides for the sale of natural gas at the wellhead, the ceilings set forth above for such sale are subject to a 1.0¢ per Mcf downward adjustment for wellhead delivery.

Respondents also request that the Commission set forth and state:

'I. That the Federal Power Commission pursuant to the Natural Gas Act, has not, since September, 1961 to the present date, regulated, limited or restricted the rates or prices which the respondents herein, if contractually authorized, could and should have been paid for their liquid hydrocarbons, gasoline, and plant products extracted from the wet or casinghead gas and which were sold to Arkansas Louisiana Gas Company pursuant to the January 11, 1952 'Most Favored Nation' contract and the related Arkansas Louisiana Gas Company division order contracts.'

While the Commission has jurisdiction over natural gas containing *liquefiable* hydrocarbons, it has no jurisdiction over liquids after their removal from the gas stream. Consequently, if a contract provides for severable payments for the natural gas, including the liquefiable hydrocarbons contained therein, and the subsequently removed liquids, we would have jurisdiction over the sale of the natural gas containing the liquefiable hydrocarbons, but no jurisdiction over the sale of the liquids. *But, there is a basic contract question presented with respect to the subject sale as to whether respondents are entitled under their sales contract to a price for the products removed by ARKLA from the natural gas purchased from respondents which is severable from the price for natural gas sold under such contract. Since, as we indicated in our order issued March 8, 1976, herein, it is appropriate for a court to resolve contract questions pertaining to the sale of natural gas, it is clear that a court would also have jurisdiction to decide this contractual issue. . . .*

The Commission's Order Denying Application for Rehearing issued June 4, 1976, in the above-entitled docket number, is hereby clarified and amplified as set forth in the body of this order." (emphasis added)

4. *Order Denying Applications for Rehearing—Issued January 7, 1977:*

> "On December 8, 1976, Arkansas Louisiana Gas Company (Arkla) filed an application for rehearing of the Commission's order issued November 8, 1976, in the above-entitled proceedings. That order clarified and amplified the Commission order issued June 4, 1976, whereby the Commission denied Arkla's petition for rehearing.
>
> Arkla originally had sought a determination that the 'favored nations' clause in its January 11, 1952, contract with Frank J. Hall, et al. (Respondents) was not triggered by certain royalty payments made to the United States Government by Arkla. We held in our order issued March 8, 1976, that we would defer to the court to decide this contract issue. . . .
>
> Arkla's application for rehearing presents no facts or legal principles that would warrant any change in or modification of the Commission's order issued November 8, 1976.
>
> The application for rehearing filed by Arkla on December 8, 1976, is hereby denied."

Arkla in other desperate efforts to escape the jurisdiction, power, and authority of the Louisiana courts over the subject legal and contractual dispute also attempted to remove Respondents' action for damages for breach of contract and its own "Petition-in-Reconvention for a Declaratory Judgment" as initially filed with the Louisiana state district court to the United States District Court for the Western District of Louisiana by means of a "Petition for Removal" as filed in that certain proceeding "Frank J. Hall, et al v. Arkansas Louisiana Gas Company," CA 75-1168. The United States District Court for the Western District

of Louisiana pursuant to Respondents' "Motion for Remand," this Court's applicable and controlling decisions in *Skelly Oil Co.* v. *Phillips Petroleum Co., supra, Pan American Petroleum Corp.* v. *Superior Court, supra,* and 28 U.S.C. § 1447(c), (d), correctly remanded, by virtue of a "Judgment of Remand" dated February 2, 1976, Respondents' action for damages for breach of contract and Arkla's "Petition-in-Reconvention for a Declaratory Judgment" to the Louisiana state district court for resolution and adjudication under applicable Louisiana state contract law in light of the fact that said legal and contractual dispute "arose under" applicable state contract law. Specifically, the United States District Court for the Western District of Louisiana in rejecting Arkla's "Petition for Removal" as based upon its same erroneous premise that Respondents' action for damages for breach of contract and Arkla's "Petition-in-Reconvention for a Declaratory Judgment" "arose under" federal law, not state contract law, expressly held that:

> *"This suit was filed in Louisiana State Court seeking damages for alleged breach of contract. . . .*
>
> *This claim is clearly merely a claim for breach of a contract, and would be determined by state law. . . .*
>
> Stated in simplest form, the plaintiffs' arguments in the Second Petition are:
>
> 1. Plaintiffs and defendant have a contract under state law.
> 2. Defendant has violated the contract.
> 3. Plaintiffs may recover under state law.
> 4. This claim is not affected by federal law.
> 5. If it is, the plaintiffs still have a claim.

The plaintiffs' claim that they have the status of small producers is not an essential element of their cause of action. See Gully v. *First National Bank, 1936, 299 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70. . .*

See Eastern Petroleum Co. v. *Kerr-McGee Corp., 7th Cir. 1971, 447 F.2d 569, where a case involving similar issues was removed to federal court on the ground of diversity but state law was applied. The jurisprudence relied upon the motion for reconsideration indicates the correctness of the remand. . . .*

Accordingly the case is REMANDED to the First Judicial District Court, Parish of Caddo, State of Louisiana, defendant to bear all costs. . .

The stay order is vacated, and the remand to state court shall take effect without further orders." (emphasis added)

Arkla's contention that the Louisiana courts below erred in failing to refer to the Federal Power Commission the interpretation of the "favored nations" provision of the subject contract is wholly erroneous and nonsensical in light of the decisions of this Court and the fact that both the Federal Power Commission and the United States district court as federal tribunals deferred and remanded the legal and contractual issues as presented in this case to the jurisdiction of the Louisiana courts for final resolution and adjudication under applicable rules of contract law.

Arkla's additional assertion that even if the Louisiana courts below did have the jurisdiction to interpret the contract, they did not correctly construe and interpret the "favored nations" clause in the subject contract according to the true intent of the parties in light of the evidence in this case is wholly without merit. Limitation of time and space do not permit a

thorough analysis of the sworn testimony of all of the witnesses who testified at the trial of this case and of all of the documentary evidence, but suffice it to say, as evidenced by the opinions of the district court and court of appeal below and their factual findings as to the intent of the parties, these factual findings are fully supported by the overwhelming evidence in the record in this case. Even Arkla's own officers and officials conceded under oath that the prices as paid by Arkla for Respondents' and the Government's royalty gas and working interest gas as produced from the same Sligo Field during the same time are "comparable" within the meaning and intent of the subject "favored nations" clause.

B. Quantum of Damages.

As correctly noted by the Oklahoma Supreme Court in the case of *Western Natural Gas Co.* v. *Cities Service Gas Co., supra,* 507 P.2d at 1249:

> ". . . there is nothing speculative in the assertion that damage results when a producer's contractual opportunity to sell his gas at a higher price per mcf is defeated."

Arkla, as Respondents' contractual obligor under the subject contract, by continuously breaching and violating their contractual rights for fourteen years and by "evasively," "uncooperatively," and "not commendably" withholding and concealing the true facts from Respondents for fourteen years, has frustrated, obstructed, defeated, and destroyed Respondents' contractual rights and legal opportunities to timely obtain their "contractually authorized prices" for their liquefiable hydrocarbons, extracted plant products, and dry or residue gas as sold to Arkla under

the subject contract during the past fourteen years in a manner consistent with all applicable laws, rules, and regulations.

In finally and definitively resolving the quantum of damages issue in the instant case, the Louisiana Supreme Court will, of course, have to take into consideration and determine what the Respondents herein would have received as contractually authorized and consistent with all applicable laws, rules, and regulations for their liquefiable hydrocarbons, extracted plant products, and dry or residue gas as sold to Arkla under the subject contract *had* Arkla timely, properly, cooperatively, and in good faith honored the contract, truthfully disclosed the relevant and material facts and cooperatively done everything necessary to fully implement and effectuate Respondents' contractual rights consistent with all applicable laws, rules, and regulations for the past fourteen years. Consistent with the decisions of this Court in *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975); *Eastman Kodak Co.* v. *Southern Photo Materials Co.,* 273 U.S. 359 (1926); and *Story Parchment Co.* v. *Paterson Parchment Paper Co.,* 282 U.S. 555 (1931), the Louisiana Supreme Court in the final analysis must compute and determine the recoverable damages and reparations in this case based upon the actual losses and injuries that Respondents sustained and incurred because Arkla breached their contractual rights for fourteen years and prevented and precluded the timely implementation and enforcement of same by "evasively" and "uncooperatively" withholding and concealing the true facts from Respondents for fourteen years. As to the proper

measure of damages for the breach of a contractual obligation, applicable contract law is succinctly summarized and set forth in 3 *Williston on Sales,* § 599, p. 293; *McCormick on Damages,* § 137, p. 560; *Friedman Iron & Supply Co.* v. *J. B. Beaird Co.,* 222 La. 627, 63 So.2d 144 (1953), and Articles 1926, 1927, 1930, 1934, 1943, and 2040 of the Louisiana Civil Code. The formula which will need to be employed by the Louisiana Supreme Court in resolving the quantum of damages issue in this case will be similar to that employed by the courts in *Western Natural Gas Co.* v. *Cities Service Gas Co.,* 507 P.2d 1236 (Okla. 1972), *appeal dismissed* and *certiorari denied,* 409 U.S. 1052 (1972); *Eastern Petroleum Co.* v. *Kerr-McGee Corp.,* 447 F.2d 569 (7th Cir. 1971); *Louisiana-Nevada Transit Co.* v. *Woods,* 393 F. Supp. 177 (W.D. Ark. 1975), as *affirmed* by United States Court of Appeals for the Eighth Circuit in a per curiam opinion on March 15, 1976; and *Cities Service Gas Co.* v. *FPC,* 535 F.2d 1278 (D.C. Cir. 1976).

While Arkla complains as to the quantum of damages as awarded by the Louisiana district court and the damages that the Louisiana Supreme Court may in the future award, Arkla has heretofore consistently computed, calculated, represented, and conceded that the Respondents' recoverable damages and reparations in this case, if Respondents were successful in proving Arkla's continued breach of contract for fourteen years, would "in the instant case" not exceed "more than $3,500,000." (App. 1a-3a.) Arkla prior to the filing of its petition in the instant proceeding has consistently represented, disclosed, and conceded to the Securities

and Exchange Commission and to the Louisiana courts below that:

1. *August 19, 1975*—Arkla in a public filing with the federal Securities and Exchange Commission disclosed and revealed its *own* independent calculation, computation and assessment of Respondents' recoverable compensatory damages in the instant case:

> "The suit asked for a declaratory judgment, an accounting, and unspecified damages in the amount of $1.5 million. . . . The amended petition appears to be for the same demand and on the same legal and factual basis as to the plaintiffs' claims, but instead of asking for an accounting, seeks damages for breach of the contract in an amount of $8,755,000 and cancellation of the contract. . . . It should also be stated that plaintiffs' demand, if they should prevail on their principal claim, is estimated by the Company to be not more than $3,500,000.
>
> The reason this lawsuit was not reported in the prospectus is that, in our opinion, it is not 'material' in the sense in which the Commission uses that term in its rules with regard to the preparation of prospectuses. . . .
>
> We have no objection to describing the lawsuit in the prospectus but since it is an action of the kind normally experienced in the business in which the Company is engaged, and it appears that a complete loss of the suit would not materially affect the Company or its prospects, we concluded that it should not be described in the prospectus."

2. *March 19, 1976*—Arkla in its Report Form 10-K (P-193) as filed with the federal Securities and Exchange Commission again candidly asserted and correctly disclosed its true and independent posi-

tion with respect to Respondents' recoverable damages in the instant lawsuit:

> "The Company in the last two or three years has experienced litigation involving several of its gas purchase contracts, arising basically from the difference between earlier and current prices for gas under producer sales. No one of these legal actions is material as that term is generally defined. *Some of these have been settled, settlement of others is expected and at least one involving a claim estimated at a maximum of $3.5 million is still pending.*" (Emphasis added)

3. *April, 1976*—Arkla in its sworn written answers to some of Respondents' written interrogatories as filed in the instant case with respect to Respondents' recoverable losses and damages judicially admitted and again conceded that:

> "The lawsuit referred to in Item 5 of defendant's Form 10-K filed March 1976 as 'one involving a claim estimated at a maximum of $3.5 million' is the present lawsuit." See P-194.
>
> "The material included in the report at Item 5 was prepared by the defendant's attorneys Gilbert L. Hetherwick and Robert Roberts, Jr." See P-195.
>
> "Insofar as Item 5 of defendant's Form 10-K, referred to in Interrogatory No. 11, is concerned, defendant's attorney Robert Roberts, Jr. made the estimate of the maximum amount which, if plaintiffs were wholly successful in their suit, might be recovered in the suit." See P-196.

Clearly, Arkla's consistent computations, calculations, and estimates of Respondents' recoverable damages in the instant case took into consideration, as the Louisiana Supreme Court must likewise do, what the

Respondents herein could and would have received as contractually authorized for their liquefiable hydrocarbons, extracted plant products, and dry or residue gas as sold to Arkla under the subject contract in a manner consistent with all applicable laws, rules, and regulations *had* Arkla not continuously breached and violated the subject contract for fourteen years and *had* Arkla not obstructed, frustrated, hindered, and prevented the timely performance and implementation of Respondents' contractual rights in a manner consistent with all applicable laws, rules, and regulations for fourteen years. Certainly, Arkla should not be heard to complain on the quantum of damages issue unless the Louisiana Supreme Court in measuring Respondents' recoverable damages exceeds the calculations and estimates as consistently and presumably correctly made by Arkla in connection with the instant case.

In conjunction with Arkla's different analysis of the quantum of damages issue as set forth in its petition herein, Arkla now asserts that the Louisiana Supreme Court might in computing Respondents' recoverable damages possibly consider price levels in connection with dry or residue gas that could exceed the maximum, just, and reasonable rate ceilings that were previously established and approved for the area that includes the Sligo Gas Field by the Federal Power Commission in its Opinion Nos. 607 and 607-A. 46 F.P.C. 900 (1971); 47 F.P.C. 99 (1972). In that the prices as paid for the Government's royalty gas in the Sligo Gas Field during the subject period of time were consistently and substantially *below* the Federal Power Commission's approved maximum area rate ceilings, Respondents' contractually authorized prices for their dry or residue gas as based upon the Government's prices, which Respondents did not receive and were not able to obtain because Arkla elected to breach the contract for fourteen years and to "evasively" and "uncooperatively" withhold and conceal the true facts from Respondents for fourteen years, of necessity could not and did not exceed the Federal Power Commission's estblished and approved maximum, just, and reasonable area rate ceilings. There is no dispute or controversy as to the existence and extent of the Federal Power Commission's maximum, just, and reasonable area rate celings. Moreover, there is no dispute as to the fact that the contractually authorized prices, which Respondents should and would have received for their liquefiable hydrocarbons and extracted plant products *had* Arkla *not* breached the contract and *had* Arkla *not* successfully withheld and concealed the true facts from Respondents for fourteen years, were *not* subject to any of the Federal Power Commission's maximum rate ceilings. Again, it will be the task and duty of the Louisiana Supreme Court to fix and limit the recoverable damages that Respondents are justly entitled to in this case to a sum that places Respondents in the same or at least as good a position that Respondents could and would have been in *had* Arkla *not* breached the contract for fourteen years and *had* Arkla *not* successfully withheld the true facts from Respondents for fourteen years.

In that Arkla was unable to even in theory create any real or substantial federal issues in connection with the lower courts' interpretation of the subject contract and the computation of recoverable damages, Arkla in its petition attempts to create a dispute as to Respondents' small producer status, when in fact there is no real dispute. Prior to the commencement of the in-

stant lawsuit in the Louisiana courts, Respondents were certified as small producers by the Federal Power Commission as of October 10, 1972 (FPC Docket No. CS73-323), and Arkla consistently and properly recognized Respondents' status as small producers. Arkla in order to attempt to create some federal issue before the Federal Power Commission in the proceedings referred to in its petition at 8 n.3 raised the question before the Federal Power Commission as to which Respondents were covered in connection with the above-referenced certificate. The Commission in its order dated November 8, 1976, confirmed the status of all of the Respondents herein as small producers. Even under Arkla's analysis, the status of Respondents as small producers is pertinent, if at all, only to the quantum of damages issue which is presently pending before the Louisiana Supreme Court and is not explained at all in Arkla's petition. The Louisiana Supreme Court will, of course, have to determine the extent to which Arkla injured and damaged Respondents prior to the time Respondents attained the administrative classification of small producers by breaching and violating their contractual rights and successfully withholding and concealing the true, relevant, and material facts necessary for the implementation and enforcement of Respondents' contractual rights consistent with all applicable laws, rules, and regulations. Arkla's contention that the Louisiana Supreme Court will not correctly "adhere to the provisions of the Natural Gas Act and the pertinent regulations of the FERC in its determination of damages" is terribly unfair and premature. Until the Louisiana Supreme Court acts on the quantum of damages issue, there is not even a record against which this contention can be judged and there is no

reason whatever to assume that the Louisiana Supreme Court will not properly compute and calculate the recoverable losses and damages in this case consistent with Arkla's own calculations, computations, and estimates of Respondents' recoverable losses and damages in the instant case.

CONCLUSION

For the foregoing reasons, Arkla's petition should be denied.

Respectfully submitted,

JAMES FLEET HOWELL
WIENER, WEISS, MADISON & HOWELL
411 CNB Building
Shreveport, Louisiana 71101

Attorney for Respondents

January 1979

APPENDIX

APPENDIX A

BLANCHARD, WALKER, O'QUIN & ROBERTS
FIRST NATIONAL BANK BUILDING
POST OFFICE DRAWER 1120
SHREVEPORT, LOUISIANA 71163
TELEPHONE (318) 221-6858

August 19, 1975

AIR MAIL

Securities and Exchange Commission
Attention: Mr. Blair Corkran
Division of Corporation Finance
Washington, D. C. 20549

RE: Arkansas Louisiana Gas Company,
Registration No. 2-54218, Form S-9

Dear Sirs:

This is in response to telephone conversation on Monday, August 18, yesterday, between Mr. Corkran and the undersigned as attorney for Arkansas Louisiana Gas Company. Mr. Corkran inquired as to whether the pending lawsuit of Frank J. Hall and fourteen other plaintiffs against Arkansas Louisiana Gas Company (the "Company"), No. 225,699 on the docket of the First Judicial District Court of Louisiana within and for the Parish of Caddo, should be described in the preliminary prospectus dated July 21, 1975, a part of the above registration, under the caption "Legal Proceedings" on page 19.

The suit referred to was filed in the First District Court, Caddo Parish, in October 1974, by fifteen plaintiffs, against the Company. The plaintiffs brought the suit on a contract between them (or in certain instances their predecessors) with a number of other sellers not party to the suit and the Company for the sale of gas to be produced from certain

gas production properties in the Sligo Gas Field, Bossier Parish, Louisiana. The contract was executed in January, 1952, and its term extends into 1980. The suit claimed that the agreed prices under the contract, by reason of payments made by the Company to the Federal Government under an oil and gas lease, beginning in 1961 were increased and had not been properly paid by the Company. The suit asked for a declaratory judgment, an accounting, and unspecified damages in the amount of $1.5 million. The defendant answered the suit denying plaintiffs' version of the agreement and claiming that the prices to the plaintiffs had been properly calculated and paid. After extensive preliminary proceedings, the plaintiffs on June 12, 1975 superseded their original demand with an amended petition on which the action is now pending. The amended petition appears to be for the same demand and on the same legal and factual basis as to the plaintiffs' claim, but instead of asking for an accounting, seeks damages for breach of the contract in an amount of $8,755,000 and cancellation of the contract. The Company believes that it has paid plaintiffs all sums due under the contract and expects to prevail on the principal issue of the suit. In addition, there are a number of other issues, the decision of which will be material if plaintiffs should prevail on their claim; for example, prescription (limitation), whether the Federal Power Commission has sole jurisdiction over plaintiffs' demand, the effect on the agreement and its interpretation and performance of the Natural Gas Act and the Federal Power Commission's regulations thereunder. It should also be stated that plaintiffs' demand, if they should prevail on their principal claim, is estimated by the Company to be not more than $3,500,000.

The reason this lawsuit was not reported in the prospectus is that, in our opinion, it is not "material" in the sense in which the Commission uses that term in its rules with regard to the preparation of prospectuses. If the entire eight million dollar claim should be considered at issue in

the suit, it would affect earnings by additional gas purchase expense with an offset to the extent of 50% by reducing income taxes, and, as we understand the proper accounting, the additional expense would be spread over the fourteen years back to 1961. If the entire amount at risk in the suit should be considered as affecting the year in which a judgment might become final, the risk, $4,377,000, would be barely more than 10% of the net income of the Company for the year ending May 31, 1975, as reported in the prospectus, and could be compared also with the income from continuing operations before income taxes (58.60 million dollars), and with the income from continuing operations (39.24 million dollars). The amount claimed is obviously less than 10% of current assets and less than 5% of total assets—tests of materiality which are mentioned in certain of the Commission's rules. The annual reduction in income would be in the order of $315,000.

We have no objection to describing the lawsuit in the prospectus; but since it is an action of the kind normally experienced in the business in which the Company is engaged, and it appears that a complete loss of the suit would not materially affect the Company or its prospects, we concluded that it should not be described in the prospectus.

We would be glad to have your conclusions on this point.

Very truly yours,

/s/ Robert Roberts, Jr.

Blanchard, Walker, O'Quin & Roberts

RRJr/er

cc: Eugene R. Sullivan, Esq.
David G. Ormsby, Esq.

APPENDIX B

ARKANSAS LOUISIANA GAS COMPANY
COMPANY

INTERNAL CORRESPONDENCE

DATED AT Shreveport, Louisiana
November 20, 1961

TO: Mr. J. C. Templeton

FROM: B. E. Harrell

SUBJECT: U.S.A. Lease—Sligo

In answer to your letter of November 17, 1961, concerning royalty price applicable to the above lease, this is to advise that I have no particular opinion as to what price should be paid to royalty owners by ALG in this field. However, I do wish to caution you that we have a favored nations contract with W. E. Hall et al in this field and the price they are receiving is presently $0.08797 per MCF. I do not know whether our paying any royalty owner a higher price than $0.08797 would activate this favored nations clause; however, if the attorneys feel that there is no danger of a royalty price activating a favored nations clause, then I have no objection to paying the Government at a price substantially higher than $0.08797.

I wanted to bring this out, however, since any activation of favored nations clauses in this area would cost ALG several million dollars increase in cost of gas annually.

/s/ BILL

BEH:dm

cc: Mr. D. W. Weir
Mr. Robert Roberts, Jr.

APPENDIX C

ARKANSAS LOUISIANA GAS COMPANY
COMPANY

INTERNAL CORRESPONDENCE

DATED AT December 27, 1961.

TO: Mr. John W. Denhollem

FROM: Robert Roberts, Jr.

SUBJECT: Operating Agreement—Barksdale Field
Lease, Sligo Area, Bossier Parish, Louisiana

This is in response to your memorandum of December 18, 1961, requesting my comment on recent correspondence concerning the effort to agree on a balancing provision (Section 3) for the Operating Agreement of February 1, 1961.

After our telephone conversation yesterday I find that in my file is a copy of the amendment submitted by Mississippi River Fuel Corporation with their letter of June 14, 1961. Shortly afterward I commented on Mississippi River's draft and send you herewith a copy of my memorandum to you of July 25th in that connection. I do not know that there is anything that I can add to the comments I made in that letter.

Texas Gas' letter of December 13th emphasizes the difficulty of the problem and the difference in point of view of the various parties: You do not want to buy any gas or set a price, and obviously several of the parties want to do just that.

As requested, your file is returned herewith.

Very truly yours,

/s/ Robert Roberts, Jr.

Encs-
RRJr:m

cc—Messrs. J. C. Templeton
M. C. Bubenzer
J. O. Cooke, Jr.

APPENDIX D

United States Government
Memorandum

TO: Files DATE: 10-22-62

FROM: N. Orvis Frederick

SUBJECT: BLM-A-054491, Sligo field, Louisiana

J. C. Templeton, Vice President, Arkansas-Louisiana Gas Company, Shreveport, came in at 9:30 on Friday, October 19, 1962, to discuss the $34,723.45 deficit (as of 8-1-62) in royalty payments, mostly due to their 8.547¢ per MCF value placed on gas taken in kind being below reasonable value and below/all sales from the same lease by their co-lessees.

Mr. Templeton is aware of the higher prices being paid for 85% of the gas from this lease, but maintained Ark-La is buying a great deal of gas from other producers in the field at the 8.5¢+/MCF price by 1952 contracts (referred to in his letter to us dated 4-13-62); feared the other producers would be dissatisfied if Ark-La paid us more; and suggested a negotiated price. He was advised that these were unacceptable; that royalty would continue to be computed on the Union Producing Company price (our letter of 3-27-62) and in accordance with the lease instrument and regulations; and that Ark-La had the right of appeal.

He expressed little interest in an appeal but wished to have time to consult their attorney, who will be back from vacation in about a week, and then present the matter to the Company board (!), and that we would hear further from him in 10 to 14 days. It seemed most likely that Ark-La will agree to recalculate their royalty payments in agreement with our royalty statements.

/s/ N. Orvis Frederick
N. Orvis Frederick

Copy to Shreveport
NOF:ec

APPENDIX E

ARKANSAS LOUISIANA GAS COMPANY
COMPANY
INTERNAL CORRESPONDENCE

DATED AT Shreveport, Louisiana
January 17, 1974

To: Mr. Jim Monk

FROM: Gilbert L. Hetherwick

SUBJECT: D. B. McConnell, *et al*
Sligo Field, Louisiana

Attached is a draft of a letter responding to Will Hall's letter of January 11, 1974, in accordance with your request of January 15, 1974.

I drafted this response like you requested to simply state that we are not paying a higher price than the price in his contract. However, that is not what he asked for. He asked for specific information concerning all contracts in the Sligo Field and particularly information concerning the price we are paying the United States Government (see page 2 of his letter).

I assume from your request that you meant to deliberately not give him what he had asked for. However, I would point out that Will Hall is a lawyer and our response looks like we may be putting him off. All he has to do is draft a petition and file it in order to sue us and then he can subpoena all the contracts he wants information about. This would be troublesome and probably expensive for Arkla and I would suggest that you would consider giving him more specifically the information he asks for unless there is some reason not to.

Your file is returned herewith.

Very truly yours,

/s/ G.L.H.

GLH/fm

Attachments

APPENDIX F

No. 41,599

TWENTY-SIXTH JUDICIAL DISTRICT COURT
OF LOUISIANA
IN AND FOR THE PARISH OF BOSSIER

FRANK J. HALL, ET AL.

v.

ARKANSAS LOUISIANA GAS COMPANY

DECLINATORY EXCEPTION OF IMPROPER VENUE

NOW INTO COURT, through undersigned counsel, comes the defendant, ARKANSAS LOUISIANA GAS COMPANY, appearing solely for the purpose of this exception, and excepts to plaintiffs' petition on the following grounds:

The venue in which this suit is filed is improper because exceptor is a Delaware corporation which is licensed to do business in this state and has its principal place of business in Louisiana, in Caddo Parish. As disclosed by plaintiffs' petition, this suit is based upon an alleged breach of contract by defendant and therefore does not fall within any of the exceptions provided in the Code of Civil Procedure to the general rule that a foreign corporation licensed to do business in this state shall be sued in the Parish where its principal business establishment in this state is located.

WHEREFORE, defendant prays that this exception be maintained and that there be judgment herein in favor of defendant and against plaintiffs, and that plaintiffs' demand be dismissed at their cost.

BLANCHARD, WALKER, O'QUIN & ROBERTS

By /s/ NEILSON S. JACOBS
Neilson S. Jacobs

By /s/ CLYDE W. THURMON
Clyde W. Thurmon
Fifth Floor, First National Bank Building,
Post Office Drawer 1126,
Shreveport, Louisiana 71163

Attorneys for Defendant

FILED: September 6, 1974

APPENDIX G

NUMBER 225,699

FIRST JUDICIAL DISTRICT COURT OF LOUISIANA
IN AND FOR THE PARISH OF CADDO

FRANK J. HALL, ET AL.

v.

ARKANSAS LOUISIANA GAS COMPANY

RECONVENTIONAL DEMAND OF
ARKANSAS LOUISIANA GAS COMPANY,
DEFENDANT IN THE PRINCIPAL ACTION

The petition in reconvention of ARKANSAS LOUISIANA GAS COMPANY, defendant in the principal actions in this suit, herein sometimes referred to as "Arkla," with respect represents that:

1.

This action is brought by Arkla against the plaintiffs in the principal suit, namely:

FRANK J. HALL, a resident of Caddo Parish, Louisiana;

W. E. HALL, JR., a resident of Beauregard Parish, Louisiana;

MRS. W. E. HALL, SR., a resident of Caddo Parish, Louisiana;

THE H. M. HARRELL TESTAMENTARY TRUST, represented by Mr. Carlyle W. Urban, Testamentary Trustee;

JAMES E. HARRELL, a resident of Houston, Texas;

JOHN K. HARRELL, SR., a resident of Utopia, Texas;

ASA BENTON ALLEN, a resident of Dover, Massachusetts;

SIDNEY G. MYERS, JR., a resident of Caddo Parish, Louisiana;

W. O. COCHRAN, a resident of Bossier Parish, Louisiana;

THOMAS F. PHILYAW, a resident of Caddo Parish, Louisiana;

MRS. ELAINE ALLEN, a resident of Winnfield, Louisiana;

JAMES A. NOE, a resident of Monroe, Ouachita Parish, Louisiana;

D. B. MCCONNELL, a resident of Shreveport, Caddo Parish, Louisiana;

MRS. ELVA L. WEISS, a resident of New Orleans, Orleans Parish, Louisiana; and

SOL KAPLAN and the NATIONAL AMERICAN BANK, New Orleans, Co-Testamentary Executors of the SUCCESSION OF SEYMOUR WEISS, Docket No. 498-163, Parish of Orleans, State of Louisiana;

referred to herein as defendants in reconvention.

2.

Arkla's object in the suit is to obtain a judgment and decree declaring its rights against defendants in reconvention, for the past and for the future, with respect to the contract, hereinafter described and referred to, between Arkla and defendants in reconvention, with particular reference to the effect of Arkla's payments of royalties to its lessors under oil and gas leases covering lands in the Sligo Gas Field, Bossier Parish, Louisiana; and to resolve the dispute, hereinafter described, which has arisen between Arkla and defendants in reconvention with respect to the application of that contract to the facts hereinafter alleged.

3.

On or about January 11, 1952, Arkla and defendants in reconvention, or their predecessors, together with other persons, entered into a written agreement providing for the purchase by Arkla from the other parties to the contract of natural gas produced in the Sligo Gas Field, Bossier Parish, Louisiana; a copy of that contract (herein referred to as the "Agreement") is attached to plaintiffs' original petition in this suit, was admitted by Arkla's answer, and is now incorporated by reference in this petition in reconvention.

4.

In early 1961 Arkla acquired by assignment from Union Producing Company, the original lessee, an undivided 15% interest in and to a certain oil, gas and mineral lease from the United States of America to Union Producing Company covering lands described as Sections 1, 2, 3 and 4, Township 17 North, Range 12 West, Louisiana Meridian (called "Parcel No. 3"), the lease being identified on the records of the Department of the Interior of the United States, which has administration thereof, as Lease Serial BLM-A-054491 (Louisiana). A copy of this lease, which is hereinafter sometimes referred to as the "Government lease," and which affects lands in the Sligo Gas Field, Bossier Parish, Louisiana, is attached to and made part of this petition in reconvention as Exhibit A.

5.

Arkla and its co-owners of the Government lease have developed the lands subject thereto for production of minerals and since a time in 1961 have produced from wells on the land substantial quantities of natural gas containing condensate and other hydrocarbon liquids.

6.

Arkla owns and operates a gas gathering system and a natural gasoline extraction plant in the Sligo Field and

area, and owns and operates trunk pipelines connected with the outlet of its gasoline plant and used for transporting processed gas ("residue gas") therefrom to its general pipeline system from which gas is distributed and sold in various places in North Louisiana, East Texas, Arkansas and Oklahoma.

7.

Arkla takes in kind at or near separators at the wells all of its 15% share of the gas produced from the wells on lands covered by the Government lease; previous to Arkla's receipt of the gas, it has been processed through separators which remove the readily condensable liquids and this condensate is sold by the lease operator (MRT Exploration Company) for the account of the owners of the lease, including Arkla. Arkla takes no gas produced on lands covered by the Government lease other than its 15% share of the production; the balance is taken by or for the account of its co-owners of the lease.

8.

Arkla's 15% share of the gas produced from the wells on the Government lease, after receipt by it as described in the preceding paragraph, is taken through Arkla's gathering system to its gasoline plant where the condensable hydrocarbon liquids are extracted; this process reduces to some extent the volume of the gas and requires a certain amount of the incoming stream for fuel to operate the extraction plant. At the outlet of the gasoline plant the residue gas is placed in Arkla's pipeline and transported and sold, as described in Paragraph 6 above.

9.

There has been, since the beginning of production on the Government lease, no substantial change in the physical operation as described in the three preceding paragraphs

of this petition. Under the provisions of the Government lease, the lessor, the United States of America, is entitled to a royalty of 16⅔% of the amount or value of production obtained and saved from the leased lands; and under a further provision of the lease, Arkla is obligated "at the option of the lessor to pay the respective royalties herein provided for in value or in amount of production." The lessor, the United States of America, has never exercised its option to require payment of royalties from Arkla under the Government lease in amount of production, and Arkla, beginning with the first royalty payment and continuing without interruption to the present time, has paid to the United States under the lease its share of the royalties due thereunder based on the value of the gas and the gasoline and other products extracted from the gas.

10.

Under the provisions of the Government lease and the Code of Federal Regulations, Title 30, the United States of America, through the Department of the Interior, Geological Survey, expressly reserved the right to "establish reasonable minimum values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other products obtained from gas; due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters and, whenever appropriate, after notice and opportunity to be heard."

11.

Under the right so reserved by the lessor, as described in the preceding paragraph, the Department of the Interior, by notice in the form of letters to Arkla dated March 27, 1962, December 4, 1973 and May 17, 1974, of which copies are attached to and made part of this petition in reconvention as Exhibits B, C and D, respectively, fixed the following amounts as the value of Arkla's share of the production from the Government lease.

Per MCF of residue gas production, at a pressure base of 15.025 psia	$ 0.117432	Until January 1, 1962
Per MCF of residue gas production, at a pressure base of 15.025 psia	$ 0.130252	Until January 1, 1967
Per MCF of residue gas production, at a pressure base of 15.025 psia	$ 0.140503	After January 1, 1967
Per MCF of residue gas production, at a pressure base of 15.025 psia	$ 0.26	Effective May 1, 1974.

By the letter of December 4, 1973 (Exhibit C), fuel and shrinkage deductions at the Sligo Plant were limited to 4½% of the wet gas volumes received.

12.

Arkla has paid royalties to the United States, under the Government lease, calculated as being 16⅔% of the value of its 15% of the production from the Government lease, determined, as required by the lessor, at the unit values set forth in the preceding paragraph, including value of extracted products at the price at which sold by Arkla. Arkla's royalty payments to the United States under the Government lease in a number of months have exceeded, on the basis of such determined values per unit of gas produced, the price paid by Arkla to defendants in reconvention under the Agreement.

13.

Defendant has made no purchase from any person of gas produced from a well or wells located in the Sligo Gas Field of Bossier Parish since the date of the Agreement at a price higher than is provided by the Agreement to be paid for gas delivered by defendants in reconvention under the Agreement.

14.

Notwithstanding that Arkla's payment of royalties to the United States under the Government lease or to any other parties as royalty on gas produced in the Sligo Gas Field are not, as a matter of law or fact, purchases of gas, defendants in reconvention have brought this suit claiming that because of such royalty settlement or settlements Arkla has incurred substantial liabilities to them as additional price for the gas purchased from them under the Agreement. Arkla is entitled to have put at rest, for past transactions and for the future, the disagreement which exists between defendants in reconvention and Arkla, and which has been asserted in the principal action.

15.

The filing of this reconventional demand will not retard the progress of the principal action, inasmuch as defendants in reconvention are still proceeding, as plaintiffs, in discovery; and Arkla, pending completion of their discovery proceedings, has not yet begun the discovery necessary to its preparations for trial.

WHEREFORE, Arkansas Louisiana Gas Company, plaintiff in reconvention, prays that defendants in reconvention be served with copies of this reconventional demand and that, after trial, there be judgment on this reconventional demand in its favor and against defendants in reconvention, named in paragraph numbered 1 of this petition in reconvention, adjudging and decreeing as follows:

(1) that payments by Arkla to the United States of America, since 1961 to the present, of royalties due by Arkla to the United States under Lease Serial BLM-A-054491 (Louisiana) calculated on the value of oil and gas produced by Arkla from the land covered by said lease, as determined by the United States Department of the Interior, Geological Survey, in fact and in law have been payments of royalty under the lease and have not been payment of the price for the purchase of gas;

(2) that payments of royalties to the United States of America in the manner described in the preceding paragraph (1) will not in the future amount, in fact or in law, to payment of the purchase price for gas and oil; and

(3) that payment by Arkla to third persons of royalties under oil, gas and mineral leases held by Arkla on lands in the Sligo Gas Field, Bossier Parish, Louisiana, where such leases provide for royalty payments based on value of gas produced and have been calculated and paid on that basis by Arkla, have not been in the past, and will not be in the future, payments of the purchase price of gas produced in the Sligo Gas Field, Bossier Parish, Louisiana.

(4) Arkla further prays for all orders and decrees necessary, for costs, and for general and equitable relief.

Shreveport, Louisiana, March 14, 1975.

NEILSON S. JACOBS
MARLIN RISINGER, JR.
ROBERT ROBERTS, JR.

BLANCHARD, WALKER, O'QUIN
& ROBERTS
First National Bank Building
Post Office Drawer 1116
Shreveport, Louisiana 71163

By /s/ ROBERT ROBERTS, JR.
Robert Roberts, Jr.

Attorneys for Defendant and Plaintiff in Reconvention

NUMBER 225,699

FIRST JUDICIAL DISTRICT COURT OF LOUISIANA
IN AND FOR THE PARISH OF CADDO

FRANK J. HALL, ET AL.

V.

ARKANSAS LOUISIANA GAS COMPANY

ORDER

It appearing that the filing of the foregoing reconventional demand will not retard the progress of the principal action, leave is hereby granted for its filing.

Shreveport, Louisiana, March 14, 1975.

/s/ FRED C. SEXTON, JR.
JUDGE, First Judicial District Court
in and for Caddo Parish, Louisiana.

ENDORSED FILED
B. W. SCHULMAN, Deputy Clerk
Mar. 14, 1975

A TRUE COPY—Attest

/s/ B. W. SCHULMAN
DEPUTY CLERK

APPENDIX H

NUMBER 225,699

FIRST JUDICIAL DISTRICT COURT OF LOUISIANA
IN AND FOR THE PARISH OF CADDO

FRANK J. HALL, ET AL.

V.

ARKANSAS LOUISIANA GAS COMPANY

DEFENDANT'S MOTION FOR
SEPARATE TRIAL OF CERTAIN OF
THE ACTIONS CUMULATED IN THIS SUIT

NOW INTO COURT, in the above entitled and numbered cause, by its counsel, comes ARKANSAS LOUISIANA GAS COMPANY, made defendant herein, and respectfully shows:

1.

This motion is filed to request the Court to order separate trials of plaintiffs' action herein for a declaratory judgment and defendant's reconventional demand, on the one hand, and plaintiffs' actions for damages for breach of contract and an accounting, on the other. The grounds of this motion are as follows:

2.

Plaintiffs have cumulated in this suit, as appears from the prayer of their petition, an action for a declaratory judgment (Subdivision II of prayer of petition), an action for damages for breach of contract (Subdivision III of prayer of petition), and an action for an accounting (Subdivision IV of prayer of petition); and defendant has filed herein a reconventional demand seeking a declaration of rights as between plaintiffs and defendant under the contract between them alleged in plaintiffs' petition.

3.

Defendant does not assert that the cumulation of actions existing in this judicial proceeding is improper; but it shows that the evidence necessary for the Court's decision upon the application of the gas sales contract alleged by plaintiffs and admitted by defendants, to the facts with regard to defendant's royalty settlements under the United States Government lease also alleged in plaintiffs' petition, is relatively simple and involves principally legal rather than factual questions. Whereas, plaintiffs' claim for damages and demand for an accounting would involve evidence on, and determinations by the Court as to, the details of each monthly settlement between plaintiffs and defendant since early 1961, and recalculation of the prices in such settlements in accordance with plaintiffs' version of their rights, namely, it would require repricing each monthly settlement of each plaintiff in accordance with royalty settlements under the Government lease.

4.

Only if plaintiffs prevail in their interpretation of their rights under the contract would the monumental accounting described above be necessary. It is obvious that a determination of whether or not defendant is liable for additional prices under the contract, and the measure of that liability, prior to the trial of the accounting here sought, would simplify the proceedings in this cause, would permit a more orderly disposition of the case, and would be otherwise in the interest of justice; and that therefore a separate trial of plaintiffs' request for declaratory relief and defendant's reconventional demand should be ordered by the Court as permitted by Code of Civil Procedure, Articles 465 and 1038.

WHEREFORE, defendant prays that the Court enter an order herein for the separate trial of plaintiffs' demand for a declaratory judgment and defendant's reconventional demand, on the one hand, and of plaintiffs' demand for damages and an accounting, on the other.

For all orders and decrees necessary and for general and equitable relief.

Dated: Shreveport, Louisiana, March 14, 1975.

NEILSON S. JACOBS
MARLIN RISINGER, JR.
ROBERT ROBERTS, JR.

BLANCHARD, WALKER, O'QUIN & ROBERTS
First National Bank Building
Post Office Drawer 1126
Shreveport, Louisiana 71163

By /s/ ROBERT ROBERTS, JR.
Robert Roberts, Jr.

Attorneys for Defendant

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing motion has this day been served by United States Mail, postage prepaid, upon M. James Fleet Howell, counsel of record for plaintiffs, at his address of record in this proceeding.

Shreveport, Louisiana, March 14, 1975.

/s/ ROBERT ROBERTS, JR.
Robert Roberts, Jr.